

Water Pollution Control Advisory Council (WPCAC) Conference Call
August 28, 2003 1:00 p.m.-3:45 p.m.
Directors Conference Room 111 Metcalf Building

Attendees:

Council Members:

Barbara Butler, Billings Solid Waste Division
Shannon Dunlap, Golden Sunlight Mines, Inc.
Bill Griffin
Marc Lorenzen
Terry McLaughlin, Smurfit-Stone Container Corp.
John Schwarz, Schwarz Architecture & Engineering Inc.
Scott Seilstad
Don Skaar, Montana Chapter of American Fisheries Society
Peggy Trenk, Montana Assn of Realtors
Robert Willems, Soil & Water Conservation District
John Wilson, MT Trout Unlimited

Other Attendees:

Bob Bukantis, Department of
Environmental Quality (DEQ)
Chris Levine, DEQ
Bonnie Lovelace, DEQ
Dave Feldman, DEQ
Mike Suplee, DEQ
Don Allen, WETA

Introductions

A round of introductions was performed.

Overview of Council duties and responsibilities

Bob Bukantis said that the Clean Water Act has the goal of zero pollution discharge and to return all the polluted waters in the country to a fishable and swimmable condition. There are two approaches in the Act toward achieving these goals: technology based controls regulated mainly through permitting and by using water quality standards. For waters that meet water quality standards there are anti-degradation provisions in the Clean Water Act that protect the water from becoming polluted. For waters not meeting water quality standards, EPA and the state are required to develop and implement a strategy to restore water quality called a Total Maximum Daily Load (TMDL). The Montana Water Quality Act provides the state with the authority to implement the provisions found in the federal Clean Water Act. The Montana Water Quality Act also requires the state to provide WPCAC the opportunity to comment on any proposed rulemaking prior to bringing proposed rules to the Board of Environmental Review (BER). WPCAC's role is to advise DEQ on water pollution control issues, especially as concerns water quality standards and permitting.

WPCAC is to select a chair at the beginning of every year. Each member can designate an alternate if desired. Before each meeting the Secretary will send communications out to the council and the department to solicit agenda items for the meeting. The Secretary and the Chair will finalize the agenda and send an information packet to the Council 10 days prior to the meeting. If there is a light agenda the Chair may decide to hold a conference call instead of a meeting. At the end of the year the next year's meetings will be scheduled to occur about thirty days prior to the BER meetings. House Bill 94 requires councils to have an agenda slot to allow members of the public to discuss issues that are within the council's jurisdiction.

Bonnie Lovelace said there is a federal list that shows what goes into the permitting program (handout passed out). As permit rules and regulations are updated and changed they will be brought before the council for review. Permits can be technology based or water quality based. The Department will be doing a complete rewrite of the MPDES permit rule set over the next few years. DEQ has developed a guidance document on the rulemaking process that outlines the steps required from determining the need for rulemaking to finalizing the record (handout passed out). The federal government through a delegation program authorizes and sets minimums that DEQ must meet to run and keep the MPDES program. There is a provision in the Montana Water Quality Act that says the state cannot be anymore stringent than the federal government without jumping through a bunch of hoops. The MPDES program is run on fees with some supplemental federal money. Under the general permit section, DEQ is required to send WPCAC a copy of all general permits.

Marc Lorenzen asked if there is a mechanism to look at old septic systems not meeting standards and initiate the process to update them to meet standards?

Bonnie Lovelace said that there are waste system rules that set a minimum standard to be met. Counties implement these minimum standards. The department adopts sanitation act rules for subdivisions that are not seen by BER. The technical circulars that lay out the designs for waste water systems are adopted in the sanitation rules and the minimum standards. If there is a failure of some kind to an old system, it will lead to an update of that system. If there is a true violation of water quality standards reported by a complaint, it will trigger an update in a system to fix the problem.

Chris Levine said that the surface water quality standards states that WPCAC is to be allowed 30 days to comment on all the water quality standards and water use classification changes. The federal Water Quality Act directs the states to designate beneficial uses to all waters with the minimum being fishable/swimable uses along with existing uses. States are also directed to adopt numeric or narrative standards for priority toxic pollutants. Montana has standards for non-priority pollutants such as ammonia and temperature. EPA has developed a series of criteria documents with the latest one being continuously updated. When the National Recommended Water Quality Criteria document is updated, DEQ will update the circular for water quality standards (WQB-7) to be as stringent as EPA.

Recent additions to the Water Quality Act include: mixing zone rules and Total Maximum Daily Load provisions. The Legislature did not give the department rulemaking authority for the TMDL section of the act. Standards are applied to all state waters which include everything but lagoons, ditches made for transporting pollutions and irrigation ditches that are used up and do not return to state waters. The Administrative Rules of Montana (ARM) interprets the legislation and provides the specifics to carry it out. EPA has final approval authority and can request the state to change rules. The water quality numeric standards include chronic and acute aquatic life standards and human health criteria. The Agriculture Ground Water Protection Act indicates that if any agriculture chemical is found in ground water that does not already have a standard, the Department of Agriculture will request that DEQ adopt a standard. The WQB-7 and all standards must go through a three-year review to potentially be updated. The standards and rules can be found on both the DEQ and EPA web sites.

Terry McLaughlin asked for clarification on TMDLs existing in the act but not in statute? If DEQ does not have authority to implement TMDLs, how is the state pursuing development of TMDLs?

Chris Levine said that TMDLs are only in statute in the Water Quality Act. DEQ does not have administrative rules to implement TMDLs. There is specific language in the act indicating how DEQ is to go about TMDL development. DEQ has a TMDL section and an advisory group to help with developing TMDLs.

Scott Seilstad asked if there was regular ground water testing occurring to identify herbicide and pesticide contamination?

Chris Levine said that the Department of Agriculture has a well sampling program through out the state where herbicides and pesticides are used. Currently there are 90 agriculture chemicals with standards listed in the WQB-7.

Selection of Chair

Nominations and volunteers were solicited for Chair. Barb Butler and John Wilson both declined the position. Terry McLaughlin volunteered for the position. The members came to an agreement and Terry McLaughlin was selected for the position of Chair.

Recommendation to amend water quality standards for the classifications D-2, E-2 E-5 and F-1

Chris Levine said EPA reviews and approves all state rules and classifications. Issues concerning ephemeral streams lead to the development of new classifications. EPA decided that some of the standards associated with the new classifications were not stringent enough to protect aquatic life. DEQ has been working closely with EPA to include all necessary language and minimum requirements for the protection of aquatic life. DEQ has included all priority pollutant aquatic life standards as mandatory standards for these classifications with flexibility on the non-priority pollutant aquatic life standards. To modify the non-priority pollutants or to put any stream into a new classification requires a use attainability analysis (UAA). The rules also include housekeeping issues.

John Schwarz asked if the council could receive the EPA correspondence referenced in the memorandum?

Chris Levine said that DEQ would send the council the EPA approval/non-approval letter mentioned and the EPA rationale.

Peggy Trenk asked if the stakeholders involved in the first process had a chance to look at what EPA had worked out in their feedback as the basic problems? Have they had any additional ideas on possible solutions?

Chris Levine said that the original group involved in this process has not yet been contacted on the latest changes.

Peggy Trenk asked if there is there any penalty or fee if this does not go to the board in September? Would there be a problem in waiting until DEQ has more feed back from the stakeholders involved?

Bob Bukantis said that given that there was a mix up, DEQ would like to give the council the option to either send the proposed rule to the September board meeting if the Council is comfortable in doing so or holding the rule for further WPCAC review at the next meeting.

Terry McLaughlin said that in light of the fact this is a new council and in regards to Peggy Trenk's comments it would be best to allow more time to understand what is being proposed. What is the urgency in getting this through to the September board meeting?

Chris Levine said that EPA has a timeframe in statute to promulgate standards and rules if they disapprove of a standard or rule. DEQ is trying to get ahead of that promulgation. However, if DEQ holds off until the next meeting it is unlikely that EPA will take any action. Some communities may benefit from these new classifications but there is no real emergency.

There was a motion made and seconded to delay taking action on this agenda item until the next meeting. All approved in postponing making a decision until the next meeting.

General public comment on water pollution control issues

Don Allen said that he is from Western Environmental Trade Association (WETA). Along with other stakeholders they monitor and participate in various advisory council meetings. WETA represents most of the companies involved in natural resources. He appreciates the Council waiting on a decision on the classifications.

Other Items

Bonnie Lovelace said that permitting agenda items for next meeting would include animal feeding operations, non-degradation rules for mixing zones and possible suction dredging.

John Wilson would like to receive a briefing at the next meeting on why the federal arsenic standard was not proposed to the BER. He would also like a briefing on the recent court decision on TMDLs. How does this court decision affect DEQ since they were banking on certain things happening in court that passed legislation in anticipation of the courts favorable decision? How does this decision affect DEQ from a pollution control point of view and a financial point of view?

The council agreed and adopted a 9:30 a.m. start time for meetings.

Terry McLaughlin adjourned the meeting at 3:45.